

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

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UNITED RESOURCE RECOVERY
CORPORATION,

Plaintiff,

-against-

RAMKO VENTURE MANAGEMENT, INC. and
JOHN KOHUT,

Defendants.

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:
Civil Action No.
7:07-502-HFF
:
:
:

-----X
REPLY AFFIDAVIT OF JOHN KOHUT

STATE OF NEW YORK)

COUNTY OF NEW YORK)

)
) ss.:
)

NORBERT STOLARZEWICZ
Notary Public, State of New York
Qualified in Suffolk County
No. 01ST6128313
My Commission Expires June 6, 2009

JOHN KOHUT, being duly sworn, deposes and says:

1 I am submitting this reply affidavit (referred to in our Reply Brief as "Kohut Aff. II") in further support of the motion of RamKo Venture Management, Inc. ("RamKo") and myself to transfer this lawsuit from South Carolina to New York City.

2. I have read the Reply Brief submitted by my counsel and the facts set forth therein are accurate to the best of my personal knowledge, information and belief. I am providing copies of the following documents, attached hereto as exhibits as indicated:

- Exhibit A hereto is an email from me to Gerry Fishbeck, URRRC's Chief Operating Officer who was actively involved in settlement negotiations, dated February 8, 2007, in which I recount a perfectly amicable conversation I had with Mr. Gutierrez at about 6:00 p.m. on February 8, 2007. I described, among other things, having told Mr. Gutierrez that I "had stayed away from getting lawyers involved because it increases both of our costs but if he would

like I would have my guy talk to your counsel,” and that Mr. Gutierrez, in response, “asked that I do nothing....” On February 12, 2007, I discussed the situation by telephone with Messrs. Gutierrez and Fishbeck as they drove to the airport, during which they advised me that they both would be out of the office at a Texas trade show for the balance of the week, returning to their offices on February 20, 2007. The conversation concluded with the thought that settlement might be assisted by having my counsel speak to URRC’s corporate attorney, and that we would all continue the discussion during the following week when Messrs. Gutierrez and Fishbeck returned. My counsel was going to be away for the long weekend and not returning to the office until February 21, 2007, which appeared to fit their schedule.

- Exhibit B hereto is an email dated November 3, 2005 from me to Mr. Gutierrez, sent at his request, attaching an electronic version of all five of what were the operative agreements between RamKo and URRC for inclusion in the due diligence disk being put together for Founders. These consisted of the December 2005 Agreements (Exhibit B to RamKo’s Answer); a separate Investment Banking Agreement; and the Consulting Agreement (Exhibit A to my previous Affidavit in this matter). Thus the Consulting Agreement did not “supersede” the other four agreements, as this email (as well as the express terms of the Consulting Agreement itself) make clear.
- Exhibit C hereto is an email string from May 2005, which includes Mr. Gutierrez’s statement to me that “If you are still with me...let [sic] do it...but to be fair....we may have to do it differently....my conscious [sic] is hurting me.” I understood this email to mean that Mr. Gutierrez was feeling pangs of conscience based on the fact that he had been promising to pay for RamKo’s work when URRC closed a funding, and he had just rejected a very credible investor. This was the genesis of the Consulting Agreement whereby RamKo began to get paid for some of its work, specifically CFO-type services as of June 2005. But I emphasize that the Consulting Agreement did not supersede any other agreements and did not compensate RamKo for anything other than the narrowly defined “Services” during the stated time period.

3. I have reviewed the 15 purported non-party witnesses cited in URRC's Brief and in the accompanying affidavit of Lawson Hayes. All ten of the non-DMS witnesses, to the extent I dealt with them at all, were people I dealt with prior to June 2005. Accordingly, whatever they may have to say about my performance, which based on Mr. Hayes' second-hand account I would mostly dispute (except that I acknowledge having asked URRC's auditors questions, as that was my proper function in the role I was asked to perform), all of the referenced interactions appear to have occurred prior to June 2005. Whatever these individuals may now say, URRC was well satisfied with my performance at that point, or it would not have entered into the Consulting Agreement.

4. URRC's speculative suggestion that Founders and I have such a close relationship that they would drop everything to come to South Carolina at my request, putting an unaffiliated third party's interests ahead of their own shareholders and investors, could not be further off the mark. I do sublet office space from Founders, but we have not done any new business together for many years. Founders is a large and extremely busy enterprise, overseeing a fund in excess of \$100 million, and I do not believe that the three critical Founders witnesses (who include its Senior Partner and Managing Partner) can simply be counted upon to suspend their other business engagements to travel to South Carolina at whatever time a trial may be scheduled. The only way I can be confident of having them present is by subpoena, which will give them no choice in the matter. I also want to make the Court aware that in contrast to what URRC reports in its Brief, Mr. White of Founders, according to my most recent conversation with him, believes that all that has been released from confidentiality are the terms of the written Founders-URRC settlement, but that he may still not talk to me about the settlement or the case.



JOHN KOHUT

Sworn to before me this
11th day of May, 2007.



Notary Public

NORBERT STOLARZEWICZ
 Notary Public, State of New York
 Qualified in Suffolk County
 No. 01ST6128313
 My Commission Expires June 6, 2009

EXHIBIT A

Subject: Re: Private - (my previous email)
From: "John W. Kohut" <ramko@earthlink.net>
Date: Thu, 08 Feb 2007 18:18:51 -0500
To: gfishbeck@urrc.net

Called a little before 2:00 and was told he was on a conference call. Left message and at about 6:00 he called. He told me that he knew he needed to get this thing moving but right at the moment Gerry wanted an on-going relationship and John wanted to sever the relationship. He said his problem was trying to settle this with no cash. I threw in that I had met a buy-out group who - if he wanted i could invite to speak to him. I told him that i had had enough conversations with him to know that he didn't believe NTR brought anything to the table (but an exit strategy) and front end cash. I told him now it seemed like he was going to take them because he needed front end cash in the business. I told him that one of the advantages a buy-out group brought was being in the same place regarding an exit strategy. I told him that when it came time to take you guys out - NTR would be negotiating to buy-out your piece. I told him a buy-out group would be negotiating to sell the total interest at the best price and hence would have the same motivation as current shareholders. He told me the LOI expires at the end of the month and that I should do nothing (he said he didn't want to be accused of coming up with a stalking horse). He said he learned his lesson with Founders and has told NTR that if they're not there by month's end the exclusivity would not be renewed.

He repeated John was looking to terminate me (?) and Gerry was for on-going. (Obviously he didn't site his vote). Anyway I told him that I had stayed away from getting lawyers involved because it increases both of our costs but if he would like I would have my guy talk to your counsel. That way your counsel could give you guys input which you could share with John. He asked that i do nothing and said he would talk with Frank - and repeated he knew he owed me a quick answer on this whole thing.

Thoughts/Comments???

"K"

Gerry wrote:

I just got back home but I spoke to carlos briefly in the airport and when I brought this up he said he wanted to talk about it in the morning. We have a 2:30 meeting so I think you should still call him right after lunch but before 2:30. My guess is he still needed to talk to drew or barbara so my input won't be in the pot until he knows where they stand.

Gerry Fishbeck
United Resource Recovery Corp

EXHIBIT B

1 of 2

consultURRC.doc **Content-Type:** application/msword
Content-Encoding: base64

EXHIBIT C

Subject: [Fwd: Re: after the fact feelings]
From: "John W. Kohut" <ramko@earthlink.net>
Date: Sun, 22 May 2005 20:41:13 -0400
To: "John W. Kohut" <jwkohut@mindspring.com>

----- Original Message -----

Subject: Re: after the fact feelings
Date: Sat, 21 May 2005 13:24:25 -0400
From: Carlos D. Gutierrez <cgutierrez@urrc.net>
To: John W. Kohut <ramko@earthlink.net>
References: <005c01c55d72\$c71d5390\$5901a8c0@CDG> <428EDFD3.6050306@earthlink.net>

Barbara thought that Warren "was not very nice"

If you are still with me....let do it... but to be fair... we may have to do it differently.... my conscious is hurting me...

Carlos

----- Original Message -----

From: John W. Kohut
To: Carlos D. Gutierrez
Sent: Saturday, May 21, 2005 3:14 AM
Subject: Re: after the fact feelings

I ran out a little early today to attend my daughter's Track and Field finals so I didn't get this until now...

I had thought you would decide to share his letter with others...On a personal level, you left your senior advisor's comments out...What was Barbara's reaction to it?

My own reaction...While I have my own view (and voiced it) of what we got with Founder's...what Warren particularly brought to our party, as valuations go I told you I never was happy with theirs. Apropos of this moment in time...I would add that from my history in this type of thing I have learned 2 things...1) that "going in" valuation is not the sole issue and 2) that there is no guaranteed right answer to any of this (which I guess leans toward Gerry's reaction).

I will say that I didn't like his letter at all. While I didn't necessarily disagree with the bottom line message in either letter, I thought yours was done with a lot more class....My other reaction (which I also think fits here) is that "I 85" isn't the only road to get somewhere and so too, I don't think that Founders is the only way to the promise land.

>From the three question marks following it...I assume you didn't exactly understand John's comment, so asking you to explain it to me might not work. But I'm not exactly sure how he reacted...what he meant.

Thanks for sharing your thoughts...

best,

"K"

Carlos D. Gutierrez wrote:

I sent copies of Warren's letter to my colleagues.... very nice letter, in my opinion, and I will print it to remind me of this before making future decisions... but you should know the different reactions by others

John Drew.... next time he wants to get involved earlier so that he can measure the feelings of the people ...???

Boo.... good riddance!

Gerry.... we will always wonder

Wow.... no wonder the country is divided using the same data....huh

Regards

Carlos